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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 251

PANAMA CANAL COMPANY, *Petitioner,*

v.

GRACE LINE, INC., *et al., Respondents.*

No. 252

GRACE LINE, INC., *et al., Petitioners,*

v.

PANAMA CANAL COMPANY, *Respondent.*

On Writs of Certiorari to the United States Court of Appeals for the Second Circuit

MOTION OF INTERCOASTAL STEAMSHIP FREIGHT ASSOCIATION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE

INTERCOASTAL STEAMSHIP FREIGHT ASSOCIATION

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March 18, 1958.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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MOTION OF INTERCOASTAL STEAMSHIP FREIGHT ASSOCIATION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The Intercoastal Steamship Freight Association respectfully applies to the Court for leave to file a brief as *amicus curiae* on the argument of this case.

Respondents, cross-petitioners Grace Line, et al., have consented to the filing of such brief, but petitioner, cross-respondent Panama Canal Company, has refused.

NATURE OF THE ASSOCIATION'S INTEREST

The Intercoastal Steamship Freight Association is an unincorporated association of shipping companies operating under the United States flag in the intercoastal trade, including nearly all the common carriers in this trade. The term "intercoastal trade" refers to the trade between the East and West Coasts of the United States through the Panama Canal.

The interest of the Association in Panama Canal Tolls is apparent.

REASONS FOR THE SUBMISSION OF A BRIEF

The purpose of applicant's brief is to correct certain factual misapprehensions appearing at pages 67-68 of the brief for Panama Canal Company. It is apparent from those pages that the authors of the Panama Canal Company brief have little knowledge of the intercoastal shipping business and of the rail-water competitive situation. Applicant wishes to inform this Court of the true facts.

The factual misapprehensions to which applicant refers are Panama Canal Company's statements that (1) a "substantial decrease [in tolls] would enable the steamship lines considerably to lower their rates," and (2) the transcontinental railroads "would be confronted with the choice of either losing a sizeable portion of their long-haul business or of lowering their rates."

Counsel for respondents, cross-petitioners Grace Line, et al. [Mr. C. Dickerman Williams] has advised that his brief is not yet available. He has further advised that he is not familiar with the factual matters thus alleged by Panama Canal Company, that there is nothing in the Record on the subject.

Accordingly, it is respectfully requested that this application for leave to file a brief as *amicus curiae* be granted.

Respectfully submitted,

INTERCOASTAL STEAMSHIP FREIGHT ASSOCIATION

By ODELL KOMINERS,
Counsel.

March 18, 1958.

BRIEF AMICUS CURIAE FOR INTERCOASTAL STEAMSHIP FREIGHT ASSOCIATION

This brief is filed by *amicus curiae*, Intercoastal Steamship Freight Association, which includes in its membership nearly all of the common carriers by water operating between the Atlantic and Pacific Coasts of the United States by way of the Panama Canal.

The purpose of this brief is to prevent becoming embedded in the archives of this Court, and in the minds of the justices thereof, certain factual misapprehensions set forth on pages 67-68 of the brief for the Panama Canal Company filed by J. Lee Rankin, Solicitor General of the United States, *et al.*, in *Panama Canal Company, Petitioner, v. Grace Line, Inc., et al.*, and *Grace Line, Inc., et al., Cross-Petitioners* v. *Panama Canal Company*, on Writs of Certiorari to the United States Court of Appeals For the Second Circuit.

The pages in the Panama Canal Company brief referred to by us state as facts (1) that the "substantial decrease (in tolls) would enable the steamship lines considerably to lower their rates" and (2) that the transcontinental railroads "would be confronted with the choice of either losing a sizeable portion of their long-haul business or of lowering their own rates." Counsel for the Panama Canal Company adds: "In view of the present financial difficulties of the railroads, the question would arise whether such a result would be in accord with the National Transportation Policy expressed in Section 1 of the Transportation Act of 1940, 54 Stat. 899, 49 U.S.C. Ch. 1, note."

We respectfully bring to this Court's attention the fact that the National Transportation Policy referred

to gives no greater weight to rail transportation and its needs than to water transportation. Moreover, the factual competitive situation of the railroads versus the intercoastal carriers, who transit the Panama Canal and are the water competitors of the transcontinental railroads referred to, is quite different from that conceived by the authors of the Panama Canal Company brief.

The transcontinental railroads have been substantially gaining and the intercoastal carriers losing coast to coast traffic. Prior to World War II, or in 1940, the total cargo carryings in the intercoastal trade were 7,540,157 net tons (reported in Report 317 of the Division of Economics and Statistics of the United States Maritime Commission as 6,732,283 long tons). At the present time the intercoastal carriers, formerly regulated by the United States Maritime Commission, are regulated by the Interstate Commerce Commission. The latest annual figures released by that Commission on intercoastal carryings are for the year 1956, and the figure is 4,246,372 net tons, a *decrease* of 43.7 percent from 1940.

Complete statistical material as to transcontinental railroad traffic in 1940 is not available. However, the current tendency of traffic moved by such railroads in competition with the intercoastal carriers can be determined by using Statements 5142 and SS-1 of the Bureau of Transport Economics and Statistics of the Interstate Commerce Commission for the years of 1950 and 1955 (1955 being the latest year for which these Statements have been issued). These Statements are Carload Waybill Statistics on freight moved by the railroads so segregated as to show the states between which the railroads carried the freight. These

waybill studies are based upon a one percent sampling of the waybills of the railroads. By following accepted procedure and multiplying figures contained therein by 100 the transcontinental movement in 1950 between the states normally served by the intercoastal carriers,[1] based on these studies, was 8,380,600 net tons, while for 1955 it was 10,193,300 tons, an *increase* of 21.6 percent. For the railroads as a whole, in the United States, the 1950 total carryings were 2,570,153,391 tons and for 1955 they were 2,606,504,107 tons, an *increase* of 1.41 percent. On the other hand, for the year 1950 the actual intercoastal carryings as shown in the Bureau of Transport Economics and Statistics Statement Q-650 (QWS), issued by the Interstate Commerce Commission, were 4,720,073 net tons, as compared with only 4,147,703 net tons in 1955, a *decrease* of 12.1 percent.

The only relevant case cited by Panama Canal Company asserted that the shipping lines needed relief. This case is *Transcontinental Rail Rates*, 268 I.C.C. 567, 571. The decision in that proceeding quotes the War Shipping Administration (page 569) as saying that from their experience in the intercoastal trade they had "become fully aware of the destructive impact of water-competitive rail rates upon the operations of domestic shipping", and were "compelled to the conclusion that successful and profitable operation of domestic shipping in the post-war period is not possible, even under the most favorable traffic conditions, unless readjustments are made in competitive rail rates

[1] States normally served by these intercoastal carriers are Washington, Oregon and California on the one hand, and on the other the states of Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia and the District of Columbia.

to permit vitally necessary readjustments in the water rates."

On page 68 of the Panama Canal Company brief, the statement is made:

"Respondents (the ocean carriers) demand that the Canal tolls be reduced 26½ per centum, or 24¢ per ton. This substantial decrease would enable the steamship lines considerably to lower their rates."

In fact, a 24 cents per ton decrease in tolls involved would not permit a "considerable" reduction in rates.

Panama Canal tolls are based on so-called "net vessel-tons of one hundred cubic feet each of actual earning capacity determined in accordance with the rules for the measurement of vessels for the Panama Canal" (See the citation on page 4 of the Panama Canal Company brief); and not on cargo tons, as the authors of the brief seemingly suggest in the quoted matter above in arriving at a figure of "24¢ per ton." Canal tolls are now 90 cents, and a decrease of 26½ percent would amount to 23.85 cents per net vessel-ton of one hundred cubic feet. Even if this reduction produced an equivalent of this amount per *cargo* ton, to reflect it by a reduction in freight rates would mean a reduction in our freight rates of only 1.2 cents per 100 pounds. Actually, since the space in the ship occupied by the type of cargo available to the intercoastal carriers averages much less than 100 cubic feet to the ton, the reduction in tolls "demanded" by the intercoastal carriers would average less than three-quarters of a cent per 100 pounds of cargo, or only a fraction of one percent of the present average freight rate of $1.25 per 100 pounds. This is a far cry from the claim on page 68 of the Panama Canal Company's brief that

the reduction in tolls "would enable the steamship lines considerably to lower their rates."

As stated by the Interstate Commerce Commission in its 71st and latest annual report:

> "Although the rates of such carriers [intercoastal] are not to any general extent held down by our maximum rate orders, the carriers are limited in their efforts to obtain additional revenue by the rates of competitive land carriers which often have the effect of a rate ceiling." (71st Annual Report of the Interstate Commerce Commission, fiscal year ended June 30, 1957, at page 7.)

Although Panama Canal tolls have a negligible relation to rates, because of the extremely low profit margin upon which the intercoastal carriers are forced to operate the tolls are very large in relation to net income. Such a toll reduction may indeed be necessary to permit some of the marginal carriers to survive.

Respectfully submitted,

INTERCOASTAL STEAMSHIP FREIGHT ASSOCIATION

By ODELL KOMINERS,
Counsel.

March 18, 1958.